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## 38 CFR Part 62

### RIN 2900-AR15

#### Supportive Services for Veterans Families

**AGENCY:** Department of Veterans Affairs

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This interim final rule will provide a more effective subsidy to veterans in high-cost rental markets; increase the cap on General Housing Assistance to reflect increased costs; and extend the ability of SSVF grantees to provide emergency housing for the most vulnerable, unsheltered veterans and their families.

**DATES:** *Effective date:* This interim final rule is effective [insert date of publication in the FEDERAL REGISTER].

*Comment date:* Comments must be received on or before **[insert date 60 days after date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov).

Comments should indicate that they are submitted in response to “RIN 2900-AR15 – Supportive Services for Veterans Families.” Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** John Kuhn, National Director, Supportive Services for Veteran Families. 810 Vermont Avenue, N.W., Washington, DC 20420.

(202) 632–8596 (this is not a toll-free telephone number).

**SUPPLEMENTARY INFORMATION:** VA is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program under section 2044 of title 38 United States Code (U.S.C.), which requires the Secretary to provide financial assistance to eligible entities, approved under that section, to provide and coordinate the provision of supportive services for very low-income veteran families occupying permanent housing.

VA implements the SSVF Program in 38 CFR part 62. Through the SSVF Program, VA awards supportive services grants to private non-profit organizations or consumer cooperatives to provide or coordinate the provision of supportive services to very low-income veteran families who are residing in permanent housing and are at risk of becoming homeless. We note that, for the purposes of this section, permanent housing means community-based housing without a designated length of stay where an individual or family has a lease in accord with State and Federal law that is renewable and terminable only for cause. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership. A very low-income veteran family will be considered to be occupying permanent housing if the very low-income veteran family: is residing in permanent housing and is at risk of becoming homeless but for the grantee's assistance; is lacking a fixed, regular, and adequate nighttime residence, is at risk of remaining in that state if they do not receive the grantee's assistance, and is scheduled to become residents of permanent housing within 90 days; or meets one of the conditions listed above after exiting permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences.

Part 62 of 38 CFR details how the program is administered, to include the types of services, the application and scoring process, and other requirements and limitations associated with the program. This rulemaking amends 38 CFR 62.34, which establishes other supportive services that grantees may provide, which are necessary for maintaining independent living in permanent housing and housing stability. Specifically, this rulemaking will provide a more effective subsidy to veterans in high-cost rental markets; increase the cap on General Housing Assistance to reflect increased costs; and extend the ability of SSVF grantees to provide emergency housing for the most vulnerable, unsheltered veterans and their families.

Most critically, this rulemaking amends 38 CFR 62.34(a)(8) to provide a more effective subsidy to veterans in high-cost rental markets. A more effective subsidy is considered urgent and time sensitive as it will significantly improve the level of rental support available to homeless and at-risk Veterans. These Veterans currently face substantial risks of eviction and potential homelessness which constitutes a serious and imminent risk to their health. These risks are now prevalent and, with the end of eviction moratoriums, cannot be forestalled. Delays in issuing this interim rule will delay a potentially life-saving intervention.

#### 38 CFR 62.34(a)(8)

A shallow subsidy offered recurring rental assistance at a fixed rate for a longer period in comparison to Rapid Rehousing. The expectation was that this sustained support would expand housing options and increase the Veteran households' ability to meet other costly living expenses. As a result, the SSVF Program Office embarked on an initiative in October 2019 to offer the Shallow Subsidy service in select communities.

The provision of shallow subsidy funds was implemented under 38 CFR 62.34(a)(8). VA is amending the fifth sentence of 38 CFR 62.34(a)(8) to provide a more effective subsidy to veterans in high-cost rental markets. We are also reorganizing current § 62.34(a)(8) for clarity, without changing the meaning of such section.

Paragraph (a) establishes the types of rental assistance that may be provided, such as payment of rent, penalties, or fees, to help the participant remain in permanent housing or obtain permanent housing. Paragraph (a)(8) currently states, in part, that extremely low-income veteran families and very low-income veteran families who meet the criteria of § 62.11 may be eligible to receive a rental subsidy for a 2-year period without recertification. The existing paragraph further states that the maximum amount of rental subsidy is 35 percent of the applicable Fair Market Rent (FMR) published by Housing and Urban Development (HUD).

First, we are increasing the subsidy from 35 percent to 50 percent in § 62.34(a)(8). We have received strong feedback from the community that increasing the Shallow Subsidy rate up to a maximum of 50 percent is necessary to provide meaningful assistance to the very low and extremely low-income Veteran households eligible for SSVF services. The housing affordability gap for these households is too wide to be bridged with a 35 percent subsidy. The National Low Income Housing Coalition (“The Gap: A Shortage of Affordable Rental Homes”, <https://reports.nlihc.org/gap/about>) reports that 70 percent of all extremely low-income families pay more than half their income on rent (HUD defines affordable housing as paying no more than 30 percent of income on housing costs) due to the acute shortage of affordable housing. Increasing the subsidy to a maximum of 50 percent will bring more private sector housing units into the range of housing affordability for SSVF participants. Grantees will have the option of setting a subsidy rate of less than 50 percent, as 50 percent will be the maximum for the rental subsidy, on the condition that

the subsidy rate set by the grantee is sufficient to sustain housing up to the 50 percent level. As these subsidies only support rent (utilities for instance are not supported through this subsidy), and can be set at a rate of no more than 50 percent of the rent, the overall subsidy is still less than half of the veteran's housing costs. The term shallow subsidy is consistent with this approach as the veteran will still be responsible for most of the housing costs. This change is expected to promote housing stability, which is central to SSVF's mission, and will support VA's goal of ending homelessness among Veterans.

We are also amending the basis for the rental subsidy for eligible participant families to be a maximum of 50 percent of the reasonable rent as defined in § 62.34(a)(4). VA defines rent reasonableness in § 62.34(a)(4) to mean the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the property owner during the same time period for comparable non-luxury unassisted units.

The reasons for this change are several. First, VA has received feedback from SSVF grantees in California stating that using the FMR reduces the amount of subsidies payable to participants because HUD's FMR rental rates consistently lag behind the true rental rates in the market, resulting in a subsidy of less than the intended 35 percent of the rental rates in the market. HUD sets the FMR at the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market, meaning 60 percent of units will have rental costs that exceed the FMR. Furthermore, HUD counts households who moved in within the past 15 to 22 months as recent movers for purposes of determining the FMR. This results in rates that do not include the impact of recent rental inflation. Together, these policies set the FMR at below market rates.

In responding to the COVID-19 health emergency, SSVF obtained a modification under section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141) to employ a reasonable rent standard instead of the FMR. On March 31, 2020, HUD, also responding to the COVID-19 health emergency, issued a waiver of the Continuum of Care (CoC) program regulations at 24 CFR 578.49(b)(2) which prohibit CoC program recipients from using CoC funds to lease units above the FMR. In implementing the waiver of the FMR restriction, CoC program recipients were still required to ensure that units leased with CoC funds meet the CoC program's rent reasonableness standard. HUD explained that its waiver of FMR restriction will "assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID-19."

VA agrees with the SSVF grantees and believes that using a reasonable rent would more accurately represent the rental rates by providing a real time measure of rent for comparable units within the same rental market. VA also believes that the reasonable rent standard should continue to apply after the COVID-19 public health emergency. In addition, SSVF already uses rent reasonableness for purposes of determining rental assistance paid by grantees to its participants under § 62.34(a)(4) and proposes to apply that definition to § 62.34(a)(8) to support internal consistency and reduce administrative errors and burdens as this allows grantees to have a single standard for determining allowable rental assistance.

#### 38 CFR 62.34(e)(2)

VA is amending 38 CFR 62.34(e)(2) in order to increase the cap on general housing stability assistance. Paragraph (e) establishes the general housing stability assistance. Paragraph (e)(2) currently states that a grantee may pay directly to a third party (and not to a participant), in an amount not to exceed \$1,500 per participant during

any 2-year period, beginning on the date that the grantee first submits a payment to a third party for certain types of expenses. The current cap of \$1,500 was set with the publication of § 62.34(e)(2) on February 24, 2015. See 80 FR 9611. Due to inflation, the value of that cap has eroded with time.

The Consumer Price Index for all Urban Consumers (CPI-U) is a measure of the average change over time in the prices paid by urban consumers for a variety of goods and services. It provides indexes for various geographic areas and price data for food, clothing, shelter, fuels, transportation, medical care, drugs, and other goods and services that people buy for day-to-day living. General housing stability assistance funds can be provided for some of the goods and services measured by the CPI-U such as uniforms, tools, kitchen utensils, and bedding. The CPI-U is a useful indicator of the increasing annual costs of these items. Between 2015 and 2021 the cumulative CPI-U, not corrected for compounding, was 14.4 percent. Assuming an annual CPI of 3 percent for 2022, and including a modest effect for compounding interest, we are increasing the \$1,500 cap to \$1,800 so that the purchasing power of the \$1,500 cap set on February 24, 2015 is restored. Additionally, there will be an automatic adjustment to this cap so that it increases annually based on the CPI-U.

#### 38 CFR 62.34(f)

Currently, 38 CFR 62.34(f)(2) states that placement for a veteran and his or her spouse with dependent(s) in emergency housing may not exceed 45 days. We are amending 38 CFR 62.34(f)(2) to provide additional assistance to vulnerable, unsheltered homeless veteran families. We note that, for the purpose of this part, veteran family means a veteran who is a single person or a family in which the head of household, or the spouse of the head of household, is a veteran, as defined in 38 CFR § 62.2.

Through the SSVF program, VA is seeking to engage unsheltered veterans who typically have higher barriers to permanent housing placement. VA finds that in some high rental markets, particularly when working with high barrier households, 45 days was insufficient time to complete a permanent housing placement. To that end, we are increasing the current 45-day limit, stated in § 62.34(f)(2), to 60 days. This increase will provide additional time in emergency housing to the most vulnerable veteran population of unsheltered veterans and their families.

### **Administrative Procedure Act**

The Administrative Procedure Act (APA), codified at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the Federal Register for notice and comment. These notice and comment requirements generally do not apply to “a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts.” 5 U.S.C. 553(a)(2). However, 38 U.S.C. 501(d) requires that VA comply with the notice and comment requirements in 5 U.S.C. 553 for matters relating to loans, grants, or benefits, notwithstanding section 553(a)(2). Thus, as this rulemaking relates to the SSVF, VA is required to comply with the notice and comment requirements of 5 U.S.C. 553.

However, pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

In addition, section 553(d) of the APA requires a 30-day delayed effective date following publication of a rule, except for “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements

of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.”

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary has concluded that there is good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date to address the needs of service members and veterans who are homeless or at imminent risk of homelessness. Delay in the implementation of this rule would be impracticable and contrary to the public interest. More than 7 million adults currently live in households that are behind on rent payments. As of August 30, 2021, roughly 3.6 million individuals in the U.S. said they are “very likely” or “somewhat likely” to face eviction in the next two months, according to the U.S. Census Bureau’s Household Pulse Survey.

(<https://www.census.gov/data/tables/2021/demo/hhp/hhp36.html>). As seven percent of the population are veterans, this could mean nearly half a million veterans and their family members face eviction with tens of thousands becoming homeless. Earlier Centers for Disease Control and Prevention (CDC) eviction moratoriums established to ameliorate this risk are no longer in effect. The results for those facing eviction and potential homelessness include serious and imminent risks to their health. The CDC reports, homelessness is closely connected to declines in physical and mental health; homeless persons experience high rates of health problems such as HIV infection, alcohol and drug abuse, mental illness, tuberculosis, and other conditions

(<https://www.cdc.gov/phlp/publications/topic/resources/resources-homelessness.html>). Additionally, the CDC reports, “people experiencing homelessness are disproportionately affected by COVID-19.” “Homeless services are often provided in congregate (group) settings, which could make the spread of infection easier. Because many people experiencing homelessness are older adults or have underlying medical conditions, they may also be at increased risk for severe illness from COVID-19.”

(<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>). These risks are now prevalent and, with the end of eviction moratoriums, cannot be forestalled. Delays in issuing this interim rule will delay a potentially life-saving intervention

On September 4, 2020, the CDC and the Department of Health and Human Services (HHS) published an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19. 85 FR 55292. This Order was effective from September 4, 2020, through December 31, 2020, and was extended until July 31, 2021. 86 FR 34010. On August 3, 2021, CDC issued a subsequent, more narrowly tailored eviction order to temporarily halt evictions in United States counties experiencing substantial or high rates of community transmission of COVID-19. 86 FR 43244. The order was then challenged in the DC district court, which vacated the order on a nationwide basis, but stayed its judgment pending appeal. The Supreme Court then vacated the district court's stay, effectively ending the moratorium order. *See Ala. Ass'n of Realtors v. Dep't of Health and Human Servs.*, 594 U.S. (2021).

The Secretary's decision to increase the subsidy in § 62.64(a)(8) from 35% to 50% requires immediate effect to ensure rental supports are immediately available to very low-income veterans at-risk of becoming homeless, particularly given that the COVID-19 pandemic, with its sustained adverse economic consequences, may have reduced or limited their personal resources.

The U.S. Department of Treasury's Emergency Rental Assistance Program (EARP) primarily pays rental arrears; financial assistance for prospective rent payments is limited. Unlike the rental subsidy proposed by this regulation, ERAP would not make rent more affordable. The increased subsidy would be provided in addition to the ERAP funds. Other state and local resources to assist veterans with rent, outside those that

are federally supported such as ERAP, are very limited and not available or insufficient in most areas of the country. Many veterans and grantees report it has been difficult to access these resources. By making rent affordable, the rental subsidy proposed by this regulation allows veteran families to sustain their housing, giving landlords less cause to proceed with evictions.

Furthermore, widespread reports of soaring rental prices (“Rent Prices Are Soaring as Americans Flock Back to Cities” Washington Post, July 10, 2021) will leave many veteran families at-risk even if rent arrears stemming from the COVID-19 induced economic crisis have been paid by programs such as SSVF or ERAP. The low-income families served by SSVF will need the elevated levels of support to address the growing gap between their income and rental costs. The risk of becoming homeless will become particularly acute for many low-income families now that the CDC eviction moratorium is no longer in effect. Although eviction moratoriums remain in effect in a few states and municipalities, these policy responses are temporary and do not provide a permanent solution for protecting the vast majority of at-risk veterans who continue to face eviction and potential homelessness. Furthermore, eviction moratoriums do not address the underlying issue of rent affordability that will continue to place these veteran households at risk once these moratoriums end.

SSVF has used the modification obtained under 42 U.S.C. 5141 for COVID-19 to increase the resources available through the rental subsidy that is made available in § 62.34(a)(8). This has allowed SSVF to use “rent reasonableness” as the basis for the rental subsidy, rather than the FMR. While this effect only modestly increases the level of rental subsidy, it remains an important change and needs to continue even once the public health emergency ends.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest as delay

will have significant negative health consequences to homeless and at-risk veterans and is accordingly issuing this rule as an interim final rule. However, the Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register** and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

#### Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will only impact those entities that choose to participate in the SSVF Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive

impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is an economically significant regulatory action under Executive Order 12866. VA has determined that there are costs and transfers associated with the provisions of this rulemaking. The costs for § 62.34(a)(8) are estimated to be between a lower bound of \$204.2M in FY2022 and \$895M over a five-year period (FY2022-FY2026) and an upper bound of \$291.8M in FY2022 and \$1.65B over a five-year period. The costs for 62.34(e)(2) are estimated to be \$720,000 in FY2022 and \$3.8M over a five-year period.

The full Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.009, Veterans Medical Care Benefits, and 64.033, VA Supportive Services for Veteran Families Program.

### Congressional Review Act

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this regulatory action is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 801-808, because it may result in an annual effect on the economy of \$100 million or more. 5 U.S.C. 804(2). In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation. However, for the reasons explained above, VA has found that there is good cause to publish this rule with an immediate effective date, pursuant to 5 U.S.C. 808(2).

### List of Subjects in 38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grants—housing and community development, Grant programs—veterans, Health care, Homeless, Housing, Indian—lands, Individuals with disabilities, Low and moderate income housing, Manpower training program, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental security income (SSI), Travel and transportation expenses, Unemployment compensation.

### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 26, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Consuela Benjamin,**

*Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of General Counsel,  
Department of Veterans Affairs.*

For the reasons set forth in the preamble, we are amending 38 CFR part 62 as follows:

**PART 62 – SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM**

1. The authority citation for part 62 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 2044, and as noted in specific sections.

2. Amend § 62.34 by revising paragraphs (a)(8), (e)(2) introductory text, and (f)(2) to read as follows:

**§ 62.34 Other supportive services.**

\* \* \* \* \*

(a) \* \* \*

(8) Extremely low-income veteran families and very low-income veteran families who meet the criteria of § 62.11 may be eligible to receive a rental subsidy as follows:

(i) For a 2-year period without recertification.

(ii) The applicable counties will be published annually in the Federal Register. A family must live in one of these applicable counties to be eligible for this subsidy. The counties will be chosen based on the cost and availability of affordable housing for both individuals and families within that county.

(iii) The maximum amount of this rental subsidy is 50 percent of reasonable rent as defined by paragraph (a)(4) of this section. Grantees must collaborate with their local Continuum of Care (CoC) as defined at 24 CFR 578.3 to determine the proper subsidy amounts to be used by all grantees in each applicable county.

(iv) Grantees must provide a letter of support from their local CoC to the Supportive Services for Veteran Families (SSVF) Program Office when requesting VA approval of this subsidy. The SSVF Program Office must approve all subsidy requests before the subsidy is used.

(v) Very low-income veteran families may receive this subsidy for a period of two years before recertification minus the number of months in which the recipient received the rental assistance provided under paragraph (a)(1) of this section.

(vi) Extremely low-income veteran families may receive this subsidy for up to a 2-year period before recertification following receipt of rental assistance under paragraph (a)(1) of this section.

(vii) For any month, the total rental payments provided to a family under this paragraph (a)(8) cannot be more than the total amount of rent. Payment of this subsidy by a grantee must conform to the requirements set forth in paragraphs (a)(2) through (7) of this section. The rental subsidy amount will not change for the veteran family in the second year of the two-year period, even if the annual amount published changes.

(viii) A veteran family will not need to be recertified as a very low-income veteran family as provided for by § 62.36(a) during the initial two-year period. After an initial two-year period, a family receiving this subsidy, or a combination of the rental assistance under paragraph (a)(1) of this section and this subsidy, may continue to receive rental payments under this section, but would require recertification at that time and once every two years.

\* \* \* \* \*

(e) \* \* \*

(2) A grantee may pay directly to a third party (and not to a participant), in an amount not to exceed \$1,800, per participant during any 2-year period, beginning on the date that the grantee first submits a payment to a third party. This cap will be adjusted

annually based on the Consumer Price Index for all Urban Consumers (CPI-U). This amount is for the following types of expenses:

\* \* \* \* \*

(f) \* \* \*

(2) Placement for a veteran and his or her spouse with dependent(s) may not exceed 60 days.

\* \* \* \* \*

[FR Doc. 2021-24496 Filed: 11/9/2021 8:45 am; Publication Date: 11/10/2021]